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**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : CHI/29UN/LRM/2013/0003

**Property** : 29 Augusta Road  
Ramsgate  
Kent  
CT11 8JP

**Applicant** : Augustas 29 RTM Company Limited

**Representative** : Boys & Maughan, Solicitors

**Respondent** : Sinclair Garden Investments (Kensington)  
Limited

**Representative** : W H Matthews & Co, Solicitors

**Type of Application** : Section 84(3) of the Commonhold and  
Leasehold Reform Act 2002.  
No fault Right to Manage Application

**Tribunal Members** : Judge R. Norman (Chairman)  
Mr. R. Athow FRICS MIRPM

**Date and venue of  
Hearing** : 12<sup>th</sup> August 2013  
Broadstairs, Kent

**Date of Decision** : 12<sup>th</sup> August 2013

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**DECISION**

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## **Background**

1. On behalf of Augustas 29 RTM Company Limited ("the Applicant") a Claim Notice under the provisions of the Commonhold and Leasehold Reform Act 2002 ("the Act") was served on Sinclair Garden Investments (Kensington) Limited ("the Respondent").
2. The Applicant claimed the right to manage 29 Augusta Road, Ramsgate, CT11 8JP ("the subject property").
3. A Counter-Notice was served on behalf of the Respondent and it was alleged that by reason of Sections 72(1), 73(2)(b), 78(3), 80(2) and 80(7) of Chapter 1 of Part 2 of the Act the Applicant was not entitled to acquire the right to manage the subject property.
4. An application was made by Boys & Maughan, Solicitors on behalf of the Applicant under Section 84(3) of the Act for a determination that on the relevant date the Applicant was entitled to acquire the right to manage the subject property.
5. Directions were issued which included (Direction 8) that if any party wished to make any point of law they should prepare a skeleton argument as to their position and send it to the other party and to the Tribunal at least 10 days prior to the Hearing Date. At that time the Respondent was represented by P. Chevalier & Co. Solicitors and in a letter they pointed out that the Applicant had not served a Skeleton argument in accordance with Direction 8. Since the Applicant was then barred from legal argument the Respondent would not be attending the hearing and accordingly appeared solely by its Statement of Case and Skeleton Argument. Also that accordingly if the Applicant were given leave to file a Skeleton argument out of time the Respondent would require an adjournment of the hearing to enable it to consider its position.
6. A hearing was scheduled for 21<sup>st</sup> June 2013 and was attended by Mr. Mouldsdale of Boys & Maughan on behalf of the Applicant. He accepted that as required by the Directions a Skeleton Argument had not been provided on behalf of the Applicant and that what he intended to say to the Tribunal would be, in part at least, legal argument. As, in the absence of a Skeleton Argument, he would not be able to advance legal argument, he applied for leave to file a Skeleton Argument out of time and the Tribunal gave leave for that to be done. As a result, it was necessary to adjourn the hearing and a target date for the resumed hearing was given.
7. A skeleton argument was received from Boys & Maughan on behalf of the Applicant and a Response was received from P. Chevalier & Co.
8. On 29<sup>th</sup> July 2013, the Tribunal was notified by W H Matthews & Co that they had conduct of this matter in place of P. Chevalier & Co and that their client proposed to attend the hearing by way of its written submissions filed with the Tribunal.

9. A hearing was scheduled for 12<sup>th</sup> August 2013 and was attended by Mr. Mouldale on behalf of the Applicant.

### **The Hearing**

10. We informed Mr. Mouldale that we had considered all the documents supplied and were concerned that the Claim Notice did not appear to comply with Section 80 of the Act which sets out the contents of the Claim Notice and provides at 80(7) that:

“It must specify a date, at least three months after that specified under subsection (6), on which the RTM company intends to acquire the right to manage the premises.”

11. There is no dispute that the date specified in the Claim Notice under subsection (6) was 1<sup>st</sup> February 2013 and that the date specified in the Claim Notice under subsection (8) was 1<sup>st</sup> May 2013.

12. The point had been taken on behalf of the Respondent that that period was one day short of the required period.

13. Mr. Mouldale was given the opportunity to address us on that point. He did so and drew our attention to authorities which had been included in the Applicant's statement of case and skeleton argument but was unable to add anything which persuaded us that the Claim Notice was compliant with Section 80(7) of the Act.

14. We found that the wording of Section 80(7) required the specification of a date at least three months after the subsection (6) date.

15. There was authority for inclusion of the first date where some action had to be taken within a period or before the expiration of, for example, four months but we were not satisfied that such authorities supported the inclusion of the first date where, as in this case, a date was required to be “...at least three months after...”.

16. We came to the conclusion that the three months began after the end of 1<sup>st</sup> February 2013 and expired at the end of 1<sup>st</sup> May 2013 and that the earliest date which could be specified would be 2<sup>nd</sup> May 2013; being at least three months after 1<sup>st</sup> February 2013.

17. In the alternative, Mr. Mouldale sought to rely on Section 81(1) of the Act which provides that:

“A claim notice is not invalidated by any inaccuracy in any of the particulars required by or by virtue of section 80.”

18. We considered that argument but came to the conclusion that in the circumstances of this case, the provision of the 1<sup>st</sup> May 2013 as the date on which the Applicant intended to acquire the right to manage the premises was

not an inaccuracy which could be cured by Section 81 (1). It was not, for example, an inaccuracy in the form of a typing error which could be saved by Section 81(1). Neither was it a date which did not exist, such as 32<sup>nd</sup> May. Had that been the case then it would have been possible for Section 81(1) to save the claim notice and the date could have been taken to be the 31<sup>st</sup> May as that was at least three months after the Section 80(6) date. In this case the 1<sup>st</sup> May 2013 had been chosen and it had been submitted that that date was correct.

19. Having reached those conclusions, it followed that the application had to fail and we did not need to consider the other matters raised by the Respondent.

### **Appeals**

20. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

21. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

22. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

23. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge R. Norman (Chairman)